

APP/TEST

UNITED STATES SENATE
SELECT COMMITTEE ON INTELLIGENCE
SUBCOMMITTEE ON CHARTERS AND GUIDELINES

Testimony of

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Mr. CHAIRMAN. S.2525 can be a landmark in the history of intelligence. Throughout the centuries, intelligence was believed to be, as President Eisenhower once characterized it, a "necessary evil" in the world of nation states, outside the normal constraints of law and serving only the practical interests of national sovereignty. Our own country fully accepted this concept, from Nathan Hale's sincere belief, for which he gave his life, that "every kind of service, necessary to the public good, becomes honorable by being necessary," to the guidance given to our intelligence establishment in the immediate post-war era, that it be "more effective, more unique, and if necessary more ruthless than that employed by the enemy." For many years our political leadership - executive, legislative, and even judicial - viewed intelligence as a special world somewhere outside the law, necessary to preserve our nation in an unfriendly world. The fundamental contradiction be-

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tween this approach and the principles of the American Constitution was not ignored, it was accepted, with national consensus.

S.2525 represents a new concept that American intelligence must operate under the confines of the Constitution we Americans have established as the framework to govern our affairs. Far from decrying this new situation, I welcome it, because I believe that it will produce a stronger American intelligence. American people who understand American intelligence, who participate in setting the proper guidelines for its behavior, and who look to it for assistance in meeting the problems of the world around us, will support intelligence, will insist upon excellence in its product, and will help protect its necessary secrecy.

Thus, Mr. Chairman, I urge that S.2525 proceed through the legislative process and be incorporated into our statutes. The internal regulations issued within CIA over the years and the Executive Orders issued by two Presidents may have been a precursor to this statutory charter, but they cannot substitute for its function as an expression of our new national consensus with respect to American intelligence operating under American law. The American public, our political leadership and the dedicated personnel of American intelligence all will benefit by a plain, open expression of the function of American intelligence and the limits we Americans insist on its exercise. A clear chapter of work of intelligence will end the ambiguities and euphemisms which

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have characterized this field and which are the root cause of the fascination and sensationalism which have so badly harrassed and discredited the honorable men - and women - who have devoted their lives to their country in this "peculiar service," as Nathan Hale called it. While we all might have wished a quieter and less damaging transition from the old concept of totally secret intelligence as a world apart to a new concept of Constitutional Intelligence for America - a new meaning to the initials CIA - we must accept S.2525 for its real function as the milestone of a new era in our country, and as a model for others.

But since, Mr. Chairman, this is indeed such an important milestone, we must treat it as such and not as a mere reflection of the climate of excitement and sensationalism which marked the first full exposure of American intelligence to our public. This exposure did reveal activities which we Americans today repudiate, even though they might have been accepted in years gone by and even been a response to encouragement from the highest levels of our political leadership at that time. We must lift our eyes from recriminations about those events of the past to a delineation of the best possible way to approach the future.

In writing a new charter for American intelligence to replace the vague and amorphous language of the National Security Act of 1947, I believe we must outline clearly its major purpose. As we look to the years ahead, it is plain that the most important role of American intelligence will

be to give us accurate information and wise assessments about the complex problems that our country will face in a still unsettled world. This must be held as a first priority and not be subordinated in our considerations. The second and equal objective must be to assure that American intelligence operate within the limits that we Americans insist upon for actions undertaken in our name by our elected and appointed representatives.

Viewed against this standard, S.2525 can be said to meet the requirement. While its stress is on the coordination of American intelligence and on a detailed outline of the permissible limits for American intelligence, and the control machinery to ensure the limits are respected, by implication it does appear that the standard is one of excellence of information and assessment. In my view it should go further, however, and make explicit that the purpose of American intelligence is not only to inform the American executive and legislature to enable them to make wise decisions about foreign affairs in these years ahead, but also to develop techniques to pass its information and assessments to the American people to enable them to play their full constitutional role in the determination of foreign and defense policy for this nation. This also can be implied from a few incidental phrases in the bill, but in my view, the kind of fundamental revision of the charter of American intelligence that S.2525 represents should confront much

more directly this difficult challenge of how to provide intelligence in the modern sense to our citizens as well as our government. Much of the valuable information and assessments of American intelligence today does reach our public, through intermediaries such as the State and Defense Departments and statements from the White House, in most cases protecting the source while disseminating the substance. But I believe a new order of magnitude of transmission of such material might be achieved through intermediaries in Congress, academia, and the media through whom the substance of our information and assessments could be passed while protecting their sources, in the way our journalists do. This technique also would obviate the difficult diplomatic reactions apt to follow official expression by the executive of facts or views unflattering to a foreign power. I do not say this is an easy chore, but I do believe it must be recognized as an unfinished obligation in the process of making American intelligence serve our American people and it should be set out as an objective in S.2525. To the extent it can be achieved, it will replace the blind support of intelligence in the past with an informed comprehension of the excellence and the importance of intelligence for our country in the world of today and tomorrow.

Short of this future dimension of an American concept of intelligence, S.2525 in my view generally meets the need for matching today's intelligence with the Constitutional

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warrant for electronic surveillance in the U.S. and abroad), the clear emphasis on the role of the Congress through its Select Committees, and the definitions of proscribed behavior for American intelligence all reflect clearly the attitude of those of the intelligence profession as well as the American people as a whole following the exposure of those missteps and misdeeds -- albeit few and far between -- which occurred during the quarter century during which American intelligence operated under a charter of total secrecy and exhortations to meet deadly challenges seen threatening our nation. While the final reports of the investigations into American intelligence make clear that the sensational headlines and great TV theater which accompanied the initial exposures were grossly exaggerated, intelligence professionals will welcome a clear charter and precise limits within which future American intelligence efforts will be conducted. The care for the Constitutional rights of Americans and the plain statement that certain forms of abhorrent behavior will not be conducted in the name of the American people are welcome reassurances against a reoccurrence of even a small degree of activity outside proper limits.

The degree of Congressional supervision called for in S.2525 will, of course, add to the burdens of those conducting intelligence operations, as they will be required to testify and report and on some occasions may be overruled.

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United States government. The particular danger of exposure of intelligence secrets is not, in my mind, a bar to proper constitutional supervision. This Committee in its two years of history has given evidence that it can keep the secrets it has been given, and I am sure that House Select Committee has an equal resolution. It is true, as a committee of the Continental Congress said in 1776, that "there are too many Members of Congress to keep secrets" but the limited membership of these two Select Committees is in my mind a reasonable compromise between the need for supervision and the need to keep secrets. Many of these secrets already must be spread substantially within the executive branch in order that the operations function. The additional exposure to specified Members of Congress and selected staff operating under strict secrecy arrangements (including exposure to the legislation I have recommended) would in my mind not spread the secrets any further than is necessary to conform with the Constitutional process. I believe this will give American intelligence greater rather than less strength in the long run and avoid the kind of sensational hindsighting that has characterized too much of the last several years.

Mr. Chairman, within this overall posture of support for S.2525, I do have a few points on which I believe it is mistaken. I am appreciative of the changes which were made in the original draft which led up to this bill on which I was very kindly afforded the opportunity to comment, and I

believe that S.2525 is a much improved version of an essential charter for American intelligence. I will outline a few points of recommended improvement for your consideration, but I would not like these points to be interpreted as anything other than improvements on a fundamentally positive proposal.

A major gap in S.2525 I have already commented on in my testimony before the Subcommittee on Secrecy and Disclosure on March 6. I offer that statement for your record here today and must say that any overall revision of the charter of American intelligence today would be irresponsibly deficient if it did not recognize the urgent necessity to improve the legal structure for the protection of the secret sources and techniques which are vital to American intelligence. I have recommended a narrow approach toward this subject which is in my view fully compatible with the Constitution. It merely extends to the secret sources and techniques of American intelligence the same protection that we currently provide for a large number of specific subjects which we deem important enough to protect with special legislation, to include crop statistics, income tax returns and trade secrets confided to government officers. The secret sources and techniques which can contribute to the protection of our nation are at least as important as these and deserve the same protection through criminal sanctions against those who are given authorized access to such information and then

unconscionably reveal them. We, and I include myself, have endeavored to protect these secrets through tortured constructions of contract law and prior restraint, none of which have been either very effective or very dignified for such important matters for our nation. I urgently recommend the addition of language to S.2525 which will provide this kind of narrow protection of our secret intelligence sources and techniques, leaving to other forums debate about the degree of protection appropriate for our broader national defense and foreign policy secrets and confidentiality.

Another subject which I believe needs serious attention in this charter is that of cover for our intelligence officers who serve overseas. In my testimony to the Permanent Select Committee on Intelligence of the House of Representatives on December 27, a copy of which I also offer you, I pointed out the serious problem that our intelligence officers have of protecting the secrecy of their identification as intelligence officers. This charter for the work of American intelligence should include a clear statement not only that intelligence is barred from certain areas of American life such as religion, official humanities and cultural affairs and the media but an equal statutory requirement that other agencies of the United States government assist the necessary work of American intelligence (with the exception of the Peace Corps, pursuant to an arrangement

which has existed since its origin). The elimination of the use of various American agencies for cover has exposed our officers to easy identification, surveillance and frustration of their mission, aside from physical danger. The criminal provision of this statute against disclosure of the identity of CIA officers is not an adequate solution to this problem if the government does not use its own capabilities to conceal them better.

S.2525 insists that any "special activity" must meet the standard of being "essential of the national defense or the conduct of foreign policy of the United States," substituting the word "essential" for the word "important" included in the present Hughes-Ryan amendment to the Foreign Assistance Act. I believe that the word "important" should certainly solve the desired objective of limiting the use of special activity to those areas in which it indeed is important. Either the real meaning of the word "essential" would be downgraded or we might deprive ourselves of this technique in cases we would later regret. The real limit on the use of this technique will be in the procedure for review and approval through the executive branch and the Select Committees of the Congress. We do not need a debate about whether a particular activity is "essential" to the preservation of the Republic so long as we can decide through our Constitutional process whether or not it is wise.

The prohibition against particular forms of special activity includes one which would raise similar problems of definition: "The violent overthrow of the democratic government of any country". With the number of countries who cynically name themselves as "democratic republics" prevalent in the world today, I fear that this language could lead to legalistic challenges rather than discussion in the review procedure of how to meet a danger to the United States. I certainly do not envisage "the violent overthrow" of any government in the near future, and indeed would be most sparing of any such action, but I would want to hold within the American arsenal the possibility of doing this through the less clamorous means of a "special activity" than through sending the United States Marines into a situation "important" to our country. To find ourselves more limited in the use of special activities than in the use of our armed forces would be an anomaly. I respectfully suggest that this issue be left to the machinery of review through the Executive branch and the Congress through its Select Committees rather than enshrined in statute.

Mr. Chairman, I have a few other suggestions for improvement in this bill, but in general I would like to express my full support for what it represents -- an effort to produce a clear statutory charter for American intelligence and a procedure through which its complicated

and delicate operations can be reviewed and controlled according to the Constitutional procedures we Americans have established for our government. I believe it is a landmark in the development of the discipline and profession of intelligence. It will indeed require our intelligence establishment to comply with the standards we Americans believe important and with the separation of power we have established in our Constitutional structure. But, it will extend to a new dimension the statement that we can confidently state about American intelligence - that it is and must continue to be the best in the world.